

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
 Amendment of Section 73.202(b))
 FM Table of Allotments,) MB Docket No. 03-141
 FM Broadcast Stations.) RM-10703
 (Sierra Vista, Corona de Tucson, Arizona))
)

NOTICE OF PROPOSED RULEMAKING

Adopted: July 1, 2003

Released: July 3, 2003

Comment Date: August 25, 2003

Reply Comment Date: September 9, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rulemaking filed by Cochise Broadcasting, LLC, licensee of Station KKYZ(FM), Sierra Vista, Arizona, requesting that we substitute Channel 267C3 for Channel 269A at Sierra Vista, reallocate Channel 267C3 from Sierra Vista to Corona de Tucson, Arizona and modify the license of Station KKYZ(FM) to specify the new community. Petitioner pledges to file an application for the facilities and construct them, if granted.

2. This proposal was filed pursuant to Section 1.420(i) of the Commission's Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station's present allotment.¹ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. In support of its proposal, petitioner states that this modification would result in a preferential arrangement of allotments because it would provide the first local aural transmission service at Corona de Tucson. In addition, Sierra Vista will retain local aural transmission service from Stations KZMK(FM), KNXN(AM) and KTAN(AM). Corona de Tucson is a Census Designated Place with a 2000 population of 813 persons.³ It is located outside any Urbanized Area, and the 70dBu contour of Channel

¹ See, *Modification of FM and TV Authorizations to Specify a New Community of License (Report and Order in MM Docket No. 88-526)*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures (Second Report and Order in BC Docket 80-130)*, 90 FCC2d 88, 91 (1988).

³ Petitioner claims that this characteristic confers presumptive community status. *See Arnold and Columbia, California*, 7 FCC Rcd 6302 (1992). It also states that the community has a zip code, police protection through the county sheriff, a fire department, businesses, a church, VFW. The community is near the University of Arizona Science and Technology Park which houses over 20 high-tech businesses.

267C3 at Corona de Tucson will not cover more than 50% of the Tucson Urbanized Area. Therefore we need not consider the proposal pursuant to the principles outlined in *Faye and Richard Tuck*.⁴

4. With respect to gain and loss of service, Petitioner claims that no white or gray service areas would be created, and the proposal will create a service area encompassing 467,034 persons, which is an increase of over 400,000 persons who receive the station's signal. In addition, Petitioner states that in the gain area, 7,625 persons will gain a fourth service and 2,763 persons will gain a fifth service. However, Commission engineering analysis shows that there will be a loss area containing 61,363 persons and that 4,883 of those persons in the loss area will lose their third service if this proposal is granted. Petitioner is requested to address this disparity in its comments and to give additional public interest reasons to justify the removal of service from such a large number of persons.

5. We believe that the proposal warrants consideration because it would provide Corona de Tucson with its first local aural transmission service without removing the sole local transmission service from Sierra Vista,⁵ which will serve priority (3) of the FM Allotment priorities. In addition, it will allow Station KKYZ to upgrade its facilities and serve an additional number of persons. An engineering analysis has determined that Channel 267C3 can be allotted at Corona de Tucson at a site 7.7 kilometers (4.8 miles) east of the community.⁶ While this site is short-spaced to Channels 267B in Agua Prieta, Sonora, Mexico, and 266B, Sasabe, Sonora, Mexico, Petitioner has pledged to protect those channels using contour protection in accordance with the US/Mexican Treaty. Concurrence of the Mexican government will also be requested for this allotment.

6. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Channel</u>		
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Sierra Vista	265A, 269A	265A
Corona de Tucson	---	267C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 25, 2003, and reply comments on or before September 9, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁵ Stations KZMK (FM), KNXN (FM), AND KTAN(AM) are licensed to Sierra Vista.

⁶ Coordinates for Channel 267C3 at Corona de Tucson are NL 31-57-24 and WL 110-41-40.

Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷

11. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.